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SURFACE MINING

Inadequate Internal Controls Cause Procurement Problems in West Virginia

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The Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

The Honorable Nick J. Rahall, II
Chairman, Subcommittee on Mining and
Natural Resources
Committee on Interior and
Insular Affairs
House of Representatives

In your September 9, 1988, letter and subsequent discussions with your offices, you requested us to review certain aspects of West Virginia's Abandoned Mine Reclamation Program. Of particular concern was whether the West Virginia Department of Energy (WV/DOE) had engaged in questionable practices in reclamation project contracting. In this regard, West Virginia, as a federal grant recipient, must comply with the federal procurement standards promulgated by the Office of Management and Budget (OMB). In addition, state agencies must also generally comply with generally accepted internal control standards, which are embodied in the Comptroller General's Standards for Internal Controls in the Federal Government.[1]

Results in Brief

Because of inadequate internal controls, West Virginia does not always comply with federal procurement standards when it contracts for abandoned mine site reclamation. Contrary to generally accepted internal control standards, West Virginia's procurement process is largely informal and is not controlled by written policies and procedures. As a result, a number of questionable procurement practices occurred. For example, not all federally required contract clauses and provisions were included in contracts, and contract change orders were either not prepared or submitted after the contract completion date had passed.

Further, the Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE), the responsible federal oversight

[1]Standards for Internal Controls in the Federal Government, U.S. General Accounting Office (Washington, D.C.: GPO, 1983).

agency, did not identify the internal control problems or the questionable procurement practices during its annual state oversight reviews.

State officials agree that procurement problems exist and that written policies and procedures and other internal controls need to be developed to ensure compliance with federal standards. In response to our findings, the state has already taken action to correct some problems; and additional actions are forthcoming. In addition, OSMRE has established a task force to review West Virginia's procurement process and internal controls and to work with the state to ensure compliance with federal procurement standards.

Background

In 1977, the Congress enacted the Surface Mining Control and Reclamation Act (SMCRA) to regulate surface coal mining operations and reclaim severely damaged abandoned mine lands. Under the act, an Abandoned Mine Reclamation Fund, commonly called the AML Fund, was established to fund reclamation activities carried out by OSMRE or state programs approved by the Secretary of the Interior. According to the OSMRE Charleston Field Office AML Program Branch Chief, West Virginia has received over $150 million in grants since program inception to reclaim about 330 abandoned mine sites, 187 of which have been fully reclaimed.

On January 21, 1981, the Secretary of the Interior granted West Virginia primary responsibility for regulating coal mining activities and reclaiming abandoned mine sites within its borders. WV/DOE's Division of Abandoned Mine Lands and Reclamation was designated as the responsible state agency for administering West Virginia's abandoned mine land (AML) program. Interior's OSMRE, however, retained overall responsibility for ensuring that the state program is being implemented in accordance with SMCRA.

As a grant recipient, West Virginia must comply with federal procurement standards. As stated in OMB Circular A-102, Attachment "O," these standards, in part, require grant recipients to[1]:

- conduct all procurement transactions in a manner that provides maximum open and free competition,

[1]Effective March 3, 1988, "The Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" superceded OMB Circular A-102, Attachment "O." However, all of the contracts we reviewed were subject to the provisions of OMB Circular A-102.

- publicly solicit bids, when using a sealed-bid process, and award a firm, fixed-price contract to the lowest responsible bidder,
- include provisions in all contracts to protect both the state's rights and those of workers,
- maintain sufficient records to trace the significant history of each procurement, and
- maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts.

In addition to federal procurement standards, state agencies must generally comply with generally accepted internal control standards, which are embodied in the Comptroller General's Standards for Internal Controls in the Federal Government. These standards, in part, state that (1) internal control systems should be documented, (2) specific control techniques adopted, such as policies and procedures, should efficiently and effectively promote control objectives, and (3) internal control systems should provide reasonable assurance that the objectives of the system will be accomplished. Good internal controls serve as checks and balances against undesired actions and are essential to ensuring that government business is properly conducted with full accountability for resources used.

Federal Procurement Standards Are Not Always Being Met

In reviewing a random sample of construction projects under the West Virginia AML program, we found that the state has not established adequate internal controls to ensure compliance with federal procurement standards. No written policies or procedures exist to document the overall procurement process or to guide the activities carried out by the various offices involved in the process. According to the West Virginia Assistant Director for Purchasing, the state's procurement system has evolved over the years; and until the federal government became more involved, state officials saw no need to formally document the process or the roles and responsibilities of various entities involved. He also stated that West Virginia has not caught up with the new federally imposed requirements.

The Comptroller General has long maintained that well defined policies and procedures are an integral element in establishing and maintaining adequate internal control systems. Unless systems, such as the grants administration system, are well defined, little assurance exists that activities are carried out as intended.

In reviewing the state procurement process, we observed that, when normal procurement procedures were followed, the contracts we reviewed were publicly advertised and awarded to the lowest bidder. (See app. I for a detailed discussion of the West Virginia procurement process.) However, because of inadequate internal controls, including the lack of written policies and procedures, some procurement practices were found to be inconsistent with federal procurement standards. These practices provide little assurance that federal standards are applied uniformly and may result in the state assuming an unacceptable financial risk for completing work should the contractor not perform as anticipated. Specifically,

- none of the 15 contracts reviewed contained 3 federally required contract clauses and provisions,
- on 1 contract (the contract that prompted the request) the state did not adhere to the contract provisions and did not adequately monitor the work being performed,
- change orders to revise the scope of work to be performed or to extend the contract were not processed in a timely manner, if at all, and
- 2 abandoned mine site reclamation projects were undertaken without using normal competitive bidding procedures.

Federally Required Contract Clauses and Provisions Not Always Placed in Contracts

WV/DOE has not complied with the OMB Circular A-102, Attachment "O" requirement for specific contract provisions and clauses that was applicable to all reclamation contracts that we reviewed. These provisions and clauses entail

- compliance with the Copeland "Anti-Kickback" Act, which prohibits contractors or subcontractors from inducing, by any means, any person employed in the construction, completion, or repair of public works to give up any part of the compensation to which he or she is entitled,
- compliance with Executive Order 11246, which requires equal employment opportunity, and
- preservation of the state's right to terminate a contract when it is in the state's best interests (termination for convenience).

Of the 15 contracts we reviewed, none contained provisions requiring the contractor to comply with the Copeland "Anti-Kickback" Act or Executive Order 11246. In addition, none of the contracts contained termination for convenience clauses.

According to WV/DOE officials, the department neglected to insert federal grant clauses and provisions into the contracts. Further, they said that the agency did not have procedures in place to ensure that such clauses and provisions were included in contracts.

WV/DOE Did Not Always Comply With Contract Provisions or Adequately Monitor Performance

WV/DOE did not comply with the contract provisions for the one time-and-materials contract in our sample or adequately monitor the work being performed. In November 1987, the state awarded a time-and-materials contract to the Wayne K. Baker Coal Company to reclaim selected sites in 27 northern West Virginia counties. (A detailed description of this contract can be found in app. II.)

In reviewing the project files, we found that WV/DOE did not administer the Baker Coal Company contract in accordance with its provisions. Specifically, the agency did not (1) obtain the contractor's signature on work directives as a sign of acknowledgement, (2) issue formal notice-to-proceed letters to activate the contract, or (3) notify the Purchasing Division within 30 days of contract expiration of its intent to extend the contract. According to the responsible West Virginia field inspector, these provisions were inadvertently overlooked because of the large number of contracts for which he was responsible.

In addition to not adhering to the contract provisions, WV/DOE did not inspect the work being performed at the Acme site—the largest site reclaimed under the Baker contract—in accordance with the risk being assumed by the state. Under a time-and-materials contract, such as that awarded to Baker, little incentive exists to complete the work in an efficient manner. Nevertheless, inspections at the Acme site were less frequent than at 7 of the 11 other reclamation sites in our sample being reclaimed under less risky fixed-price contracts.

Although such factors as the complexity of the project and the experience of the contractor should also be considered in determining the appropriate inspection level, no written inspection policies and guidelines have been developed by WV/DOE to assist inspectors in making this determination. Instead, inspectors are given considerable latitude in determining when and how often to visit a project site.

Untimely Processing of Contract Change Orders

WV/DOE has not developed procedures and performance criteria for processing contract change orders. As a result, it consistently submitted change orders to the Department of Finance and Administration—the

state's central purchasing entity—for approval after the stipulated contract completion date had lapsed.

Of the 15 abandoned mine reclamation contracts we reviewed (2 sampled projects had 2 separate contracts), work continued on 10 contracts even though the contract completion date had lapsed. On three of these contracts, the state subsequently extended the contract period but again permitted work to continue beyond the revised contract period. For the remaining seven contracts, no formal contract extensions were ever requested. Further, WV/DOE processed a total of 17 change orders revising the scope of work to be performed on 9 of the 10 expired contracts. WV/DOE submitted 14 of these change orders, or 82 percent, to the Department of Finance and Administration's Purchasing Division from 27 to 322 days after the contract completion date, and in 3 cases after the work described in the change order had been completed. The average delay was 132 days.

Although the West Virginia Auditor's Office is responsible for determining, among other things, whether a contract is still active before it approves periodic contractor invoices and, therefore, could have revealed this problem, it did not do so. According to the Auditor's Office Chief Clerk, WV/DOE does not routinely provide this information to the Auditor's Office and no one in the Auditor's Office has ever requested it from WV/DOE. In reviewing the contract files, we found three instances in which the office approved payments after the contract completion date had passed. For example, on the initial phase of the Hodgesville "A" reclamation project, WV/DOE processed two change orders after the contract completion date, did not request that the completion date be extended in accordance with normal change order procedures, and processed seven invoices for payment totaling over $529,000 after the contract expiration date.

By not having the opportunity to consider whether change orders should be used to extend the contract completion dates, we believe, and representatives of the West Virginia Attorney General's Office agree, that WV/DOE may have compromised the state's ability to obtain compensation for untimely or deficient contractor performance.

Normal Competitive Procedures Not Followed

For two reclamation sites, Low Gap Number 2 and Acme, WV/DOE decided not to competitively advertise the reclamation work but, instead, to perform the work under existing contracts. In both cases, the decisions appear to be questionable and inconsistent with the state

requirement to conduct procurement transactions, whenever possible, based on competitive bids.

On the Low Gap Number 2 project, the design firm—Esmer and Associates—detected a subsurface fire while performing predesign activity at the site. WV/DOE processed a change order authorizing the firm to contain the mine fire and extinguish it in place (a construction activity) even though the firm's contract involved providing only engineering services for developing site-specific reclamation projects and not construction-related work. The change order, however, did not specify that the work to be performed was to be done in conjunction with a project being designed for reclamation. Instead, it stated that (1) the items were necessary to complete an experimental attempt at extinguishing burning areas through bore holes and, (2) if successful, the attempt would save "an enormous amount of money in excavation costs." According to the WV/DOE project manager, the department authorized the design contractor to perform the work because it would (1) address and rectify the problem more quickly and (2) save the state money by avoiding additional contractor mobilization costs. However, he acknowledged that the work to be performed was not unique. In addition, the Assistant Director for Purchasing stated that, despite WV/DOE's intentions, there was no reason for not following normal state policy and procedure to advertise and competitively award a contract to extinguish the fire.

Similarly, rather than competitively bidding the reclamation work for the Acme reclamation project, the former WV/DOE Commissioner decided to use the Baker Coal Company time-and-materials contract. According to the WV/DOE Assistant Director for Design, the work intended to be performed under the Baker contract was the reclamation of several small reclamation sites in northern West Virginia. The former Commissioner said his decision was based on a desire to take advantage of the low bulldozer hourly rate ($85 per hour) that Baker had contracted for with the state. However, even lower bids may have been received had the Acme project been separately advertised as originally planned. According to three contractors who bid on the northern West Virginia maintenance contract, as well as two contractors who decided not to bid, it would be far less costly to position equipment on one site, such as Acme, for an extended period of time than it would be to mobilize and transport equipment from site to site as intended under the Baker contract. The three unsuccessful bidders said that had they known that a large project would be reclaimed under the contract, their bids would have been significantly different.

Inadequate Compliance Oversight

West Virginia has not completed independent audits of its program, and OSMRE has not identified internal control problems or questionable procurement practices during its annual oversight reviews. Prior to April 12, 1985, states receiving federal grant funds were required to comply with the federal administrative and audit requirements in OMB Circular A-102, Attachment "P," Uniform Requirements for Grants to State and Local Governments. Thereafter, the audit requirements in Circular A-102 were superceded by OMB Circular A-128, Audits of State and Local Governments. Under both OMB circulars, the states are required to have independent audits of the programs conducted with federal assistance. These independent audits are intended, in part, to provide federal grantor agencies, such as OSMRE, assurance that the states' internal control systems are adequate to ensure that grant funds are spent in accordance with applicable laws and regulations. However, according to the state Legislative Auditor's Office's project manager, West Virginia has not issued an audit report for the Department of Natural Resources (WV/DOE's predecessor) covering fiscal years 1983 through 1985 because of an investigation of the state Treasurer's Office. This investigation forced the state Legislative Auditor's Office to divert audit staff from ongoing work, including the Department of Natural Resources audit. According to the Assistant Director for Purchasing, West Virginia is currently completing its first statewide audit covering fiscal years 1986 and 1987. According to the managing partner of the accounting firm performing this audit, the draft report being processed confirms that the state does not have written procurement process procedures.

Annually, OSMRE reviews all aspects of an approved state's mining program to ensure that the state is implementing its approved programs in accordance with program provisions. One aspect of this review is the procurement of construction services. OSMRE's 1985, 1986, and 1987 annual reports on West Virginia's program indicated that procurement activities were in compliance with state and federal requirements and the state reclamation plan. According to the OSMRE Chief of the Abandoned Mine Land Branch in Charleston, West Virginia, OSMRE's conclusions were based on a limited sample of procurement transactions that did not surface the problems we identified. Further, he said that, until recently, the field office staff did not have the necessary skill to perform internal control reviews of the state procurement system. Additional staff and training have been provided, and the field office is now taking a closer look at West Virginia's procurement and internal control systems.

State and OSMRE Actions Taken

According to the WV/DOE technical advisor, WV/DOE has hired an individual to perform, among other things, several administrative contracting functions. This individual will (1) develop written departmental contracting and contract administration policies and procedures, (2) review all reclamation contracts to be awarded to ensure that they comply with federal procurement standards, and (3) monitor contract completion dates to ensure timely processing of change orders.

In addition, the Assistant Director for Purchasing stated that the Department of Finance and Administration plans to issue an internal buyers manual that will include written procurement policies and procedures for buyers to follow. Finally, in conjunction with an ongoing project to centralize the state's accounting system, according to the state Auditor's Office chief clerk, a task force will develop written policies and procedures for the state Auditor's Office.

According to the Deputy Assistant Director for Program Operations of the OSMRE Eastern Field Operations Office, that office established a task force on July 18, 1989, to review the West Virginia procurement system and ensure that the state is in compliance with federal procurement requirements. The task force is composed of a certified contracting officer; the Abandoned Mine Land Branch Chief, Charleston Field Office; a field office grants specialist; and the field office emergency projects coordinator. According to the OSMRE Charleston Field Office AML Program Grants Chief, the task force met with WV/DOE officials on August 10, 1989. At this meeting, WV/DOE was advised that the task force will (1) evaluate West Virginia's internal control problems and work with the state in developing written policies and procedures, (2) provide seminars to state personnel on general procurement procedures as they relate to federal grant programs, and (3) review all emergency reclamation program contracts awarded by the state.

After the meeting, the task force began developing an action plan for the state to follow in rectifying its procurement- and grants-related problems. In view of the actions being taken by both the state and OSMRE to correct the state's procurement and internal control problems, no recommendations are being made at this time.

We conducted our review from November 1988 through May 1989 in accordance with generally accepted government auditing standards. We interviewed state procurement officials, OSMRE field office officials, and mine reclamation contractors. We selected a random sample of projects

to review and analyzed project and contract records. For additional information on our objectives, scope, and methodology, see appendix III.

We discussed the contents of the report with federal and state officials and included their comments where appropriate. However, as you requested, we did not obtain official OSMRE or West Virginia comments on a draft of this report.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of the Interior; the Director, OSMRE; and the Commissioner, West Virginia Department of Energy, and make copies available to others upon request.

If you have any additional questions or if we can be of further assistance, please contact me at (202) 275-7756. Major contributors to this report are listed in appendix IV.

James Duffus III

James Duffus III
Director, Natural Resources
Management Issues

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Abbreviations

AML	abandoned mine land
GAO	General Accounting Office
OMB	Office of Management and Budget
OSMRE	Office of Surface Mining Reclamation and Enforcement
SMCRA	Surface Mining Control and Reclamation Act of 1977
WV DOE	West Virginia Department of Energy

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West Virginia's Sealed Bid Procurement Process

West Virginia uses either an informal bid or formal sealed bid process in awarding abandoned mine reclamation contracts. In all cases, the West Virginia Department of Energy (WV/DOE), as the spending unit, prepares the necessary paperwork to obtain bids, including a bid quote sheet and project specifications. For contracts under $5,000, WV/DOE solicits bids from at least three responsible bidders and submits both the bid documents and the bid results to the Department of Finance and Administration for review and approval. For contracts over $5,000, WV/DOE prepares a formal bid package (including bid book, bid sheet, contract copy, and project specifications) and submits it to the Department of Finance and Administration for formal advertisement. Except for the preaward phase, the informal and formal processes are similar.

The following sections describe the state's formal bidding process.

The Preaward Phase

Before an abandoned mine land reclamation contract can be awarded, WV/DOE prepares and submits a requisition to the Department of Finance and Administration's Purchasing Division. Among other things, the requisition

- identifies the site to be reclaimed,
- estimates the project cost,
- stipulates a calendar-time performance period (e.g., 90 days), and
- discusses contractor responsibilities regarding the project's technical specifications.

The Purchasing Division then (1) prepares a "request for quotation" package, (2) advertises projects whose estimated value exceeds $5,000, (3) posts a copy of the quotation request in a conspicuous place within the Purchasing Division reception room, and (4) mails copies to potential bidders. Bidders must submit duplicate bid copies to both the Department of Finance and Administration and the state Auditor's Office.

The Award Phase

At the announced bid-opening time, representatives from both the Department of Finance and Administration and the state Auditor's Office concurrently open and compare the sealed bids each has received. If these two copies are not identical or if only one office has received a copy of the bid, the bidder is disqualified.

In general, the Department of Finance and Administration awards contracts to the lowest responsible bidder. Before doing so, however, the

successful bidder must obtain (1) sufficient insurance and (2) a performance bond and a labor-and-materials bond equal to the contract award amount. Once the bidder provides written evidence of this to the Department of Finance and Administration, the state awards a reclamation contract.

On the basis of the specific contract provisions, WV/DOE then activates the contract. Generally, this involves issuing a notice-to-proceed letter to the contractor. The letter specifies the project start date, the calendar-day performance time, and the contract completion date. For some contracts, WV/DOE must issue both written work directives and notice-to-proceed letters to the contractors.

The Postaward Phase

To identify postaward phase functions and responsibilities, we interviewed state officials in WV/DOE, the Department of Finance and Administration, the state Attorney General's Office, and the state Auditor's Office. The following sections describe the postaward process.

WV/DOE administers abandoned mine reclamation contracts awarded by the Department of Finance and Administration. As such, WV/DOE is responsible for overseeing the project work, including assigning field inspectors to visit the site, approving and processing periodic contractor payments, and processing contract change orders.

Contractors typically submit periodic invoices to the state to receive payment. At least three separate state offices—WV/DOE, the Department of Finance and Administration's Budget Division, and the Auditor's Office—review the invoices to ensure that the billings comply with contract terms and that the state has sufficient funds to pay the contractor. The Auditor's Office is also responsible for ensuring that the contract is still "active"—neither cancelled, terminated, nor expired. Once authorized to do so by the Auditor's Office, the state Treasurer's Office prepares a payment check and submits it to WV/DOE for delivery to the contractor.

In addition to inspecting the work being performed by the contractor, WV/DOE field inspectors also initiate change orders to modify contracts. Once reviewed and approved by WV/DOE headquarters, change orders are processed in the same manner as other purchasing requisitions. The appropriate purchasing division buyer, the Director of Purchasing, and the Commissioner of Finance and Administration each independently review the request. In addition, an Attorney General's Office attorney

reviews the change order to ensure that it is not contrary to the state constitution or state statute. A valid obligation is created when both the Department of Finance and Administration Budget Division encumbers the funds and the Attorney General's representative signs the change request. The approved change order request, bearing the signatures of the respective reviewers, is then returned to the Department of Finance and Administration where it is microfilmed and copies distributed to WV/DOE and the Auditor's Office.

Northern West Virginia Maintenance Contract

According to the Assistant Director for Design of the West Virginia Department of Energy (WV DOE), West Virginia has many small abandoned mine sites that need to be reclaimed. Typically, the state awards a contract for each site. However, WV DOE believed that this format tended to restrict the overall reclamation process. Therefore, to reclaim multiple small sites without executing separate contracts for each, WV DOE developed, and the state awarded, two time-and-materials contracts, one covering the northern counties and one the southern counties.

Although the original northern West Virginia maintenance contract awarded to the Wayne K. Baker Coal Company was not to exceed $500,000, subsequent change orders necessitated by the inclusion of the Acme site in the scope of work to be performed, as well as other cost increases, increased the contract cost. According to our calculations, the state had paid the contractor $1,420,023.50—of which about $21,000 was applied to two small reclamation projects—as of February 10, 1989, the date WV DOE cancelled the Baker contract because of the questions raised about the contract. However, invoices totaling $190,028—$110,652 for reclamation already completed and $79,376 withheld for contingencies—are still unpaid.

Baker Contract Award and Inclusion of the Acme Reclamation Site

On August 17, 1987, WV DOE developed a purchasing requisition to reclaim as many small sites as possible in the northern West Virginia counties within a 1-year time frame using an open-ended contract. Rather than issuing individual contracts for each site, WV/DOE decided to award an open-ended contract under which several selected sites, not yet identified, could be reclaimed. Because the specific work to be done was unknown, payments under the contract were based on fixed unit prices for materials and equipment. Work directives, issued after the sites were identified, would order and direct the work to be accomplished by the contractor and would include the project site location; the specific problem; the work to be performed; the time frame for work completion; and an estimate of material, equipment, and other costs based on unit prices in response to the bid proposal. The contractor then had to sign, date, and return the work directive to WV/DOE thereby acknowledging receipt and acceptance of the directive.

West Virginia Department of Finance and Administration officials told us that they were not wholly satisfied with this "open-ended" concept. To gain concept approval, WV/DOE staff provided supplemental contract design and use information and confirmed that the contract would involve reclaiming small sites and performing maintenance work on

completed sites. Department of Finance and Administration officials accepted the explanation but asked that the contract be limited to no more than $500,000.

The state advertised the contract, received nine separate bids, and subsequently awarded the contract to the lowest bidder, the Wayne K. Baker Coal Company. The bids received ranged from $306,515 to $665,100. The Baker Coal bid was approximately $3,000 lower than that of the second lowest bidder. WV/DOE accepted the bid on October 28, 1987.

While the bids were being reviewed, WV/DOE staff prepared a purchasing requisition, dated October 22, 1987, to competitively advertise a contract to reclaim the Acme reclamation site. The requisition was to provide for the reclamation of the Acme site, within 280 calendar days, at an estimated cost of $1 million. Rather than approving the purchase requisition, the then WV/DOE Commissioner directed the AML program director to reclaim this large site under the northern West Virginia maintenance contract. According to the Commissioner, this action would save money for the state by taking advantage of Baker's very low bulldozer hourly rate.

Noncompliance With Contract Provisions and Inadequate Project Monitoring

Under the Baker contract, WV/DOE was to issue (1) written work directives to the contractor and obtain the contractor's signature on them as a sign of acknowledgement and (2) formal notice-to-proceed letters to the contractor. Further, the contract specified that, to renew the contract, WV/DOE had to notify the West Virginia Department of Finance and Administration's Purchasing Division, in writing, 30 days prior to the contract expiration date and provide a written consent agreement signed by Baker Coal Company and WV/DOE.

In reviewing the project files, we found that WV/DOE did not administer the Baker Coal Company contract in accordance with its provisions. Specifically, the agency did not

- obtain the contractor's signature on work directives,
- issue formal notice-to-proceed letters to activate the contract, or
- notify the Purchasing Division within 30 days of contract expiration of its intent to extend the contract.

In signing a work directive, a contractor acknowledges acceptance of the terms of the directive, which include such items and terms as the work

to be accomplished by the contractor; a time frame; and an estimate of material, equipment, and costs. Without signed work directives, it is difficult to determine contract compliance.

Notice-to-proceed letters specify the project start date, the calendar-day performance time, and the contract completion date. Without this information, the agency could not assess whether the Baker Coal Company had performed in a timely manner. Also, instead of notifying the Purchasing Division appropriately of its intention to extend the Baker contract, WV DOE processed a change order to extend the contract term on December 28, 1988, more than a month after the November 25, 1988, contract expiration date.

In addition to not adhering to the contract provisions, WV DOE did not adequately monitor the work being performed at the Acme site—the largest site reclaimed under the Baker contract—in accordance with the risk being assumed by the state. With time-and-materials contracts, little incentive exists to complete the work in an efficient manner. Recognizing this, the Federal Acquisition Regulation states that

"a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used."

However, as shown in table II.1, inspections at the Acme site were less frequent than at 7 of the 11 other reclamation sites in our sample. Reclamation work at these 7 sites was being performed under lower-risk fixed-price contracts. We measured inspections during the stipulated contract performance period because we could not establish an appropriate measurement period for those contracts that had not been validly extended.

Table II.1: Project Inspection Ratio

Site	Contract type	Performance period in days	Number of inspections	Performance days per inspection
A	Fixed price	120	77	1 55
B	Fixed price	120	63	1 90
C	Fixed price	120	51	2 35
D	Fixed price	90	37	2 43
E	Fixed price	180	71	2 53
F	Fixed price	120	46	2 60
G	Fixed price	180	61	2 95
Acme	Time and materials	365	116	3 14
H	Fixed price	270	64	4 21
I	Fixed price	30	7	4 28
J	Fixed price	180	24	7 50
K	Fixed price	60	6	10 00

According to a WV/DOE district engineer, the number of inspections needed to provide reasonable assurance that grant funds are efficiently and effectively spent depends on several factors including the complexity of the project, the experience of the contractor in reclaiming sites, and the topography of the site itself. In addition, on time-and-materials contracts, the use of other control techniques—such as certified payroll records and staking out, or delineating, the site to be reclaimed—could influence the number of inspections. However, WV/DOE did not incorporate these other control techniques into the Baker contract. According to the West Virginia field inspector responsible for this contract, WV/DOE did not stake out the Acme site in order to keep the engineering costs down. Therefore, WV/DOE could not ensure that the contractor was performing only the work required or that the contractor's invoices reasonably reflected the amount of work performed at the site. Further, without a certified payroll, WV/DOE could not determine the reasonableness of either the labor hours or the equipment hours billed by the contractor.

Objectives, Scope, and Methodology

On September 9, 1988, the Chairmen of the House Committee on Interior and Insular Affairs and the Subcommittee on Mining and Natural Resources, Committee on Interior and Insular Affairs, requested that we investigate certain aspects of West Virginia's Abandoned Mine Reclamation Program. Of particular concern was whether the West Virginia Department of Energy (WV/DOE) had engaged in questionable contracting procedures for reclamation projects, citing as an example a contract to the Wayne K. Baker Coal Company. Specifically, we were requested to examine WV/DOE's procurement standards and the agency's compliance with project inspection and monitoring requirements.

To assess West Virginia's process for procuring abandoned-mine reclamation services, we (1) reviewed state procurement standards and procedures, (2) evaluated the state's project inspection philosophy, (3) identified and tested internal controls for the procurement process, and (4) assessed system compliance with both OMB Circular A-102, Attachment "O," grant recipient procurement requirements and generally accepted internal control standards as developed by the Government Accounting Standards Board, adopted by the American Institute of Certified Public Accountants in its "Codification of Statements on Auditing Standards," and embodied within the Comptroller General's Government Auditing Standards and Standards for Internal Controls in the Federal Government.

To determine whether contracts had been awarded and change orders processed in compliance with state and federal procurement standards, we reviewed the contract files for a randomly selected sample of projects. We discussed these contracts as well as state procurement policies and procedures with state officials from the Auditor's Office, the Department of Energy, the Solicitor's Office, and the Department of Finance and Administration.

We selected our sample of projects from a list of projects initiated in grant periods 4 through 7 (fiscal years 1985 through 1988) in order to select recent projects for which the state had awarded at least one reclamation contract. Of the 166 projects identified, we eliminated 32 because they were still in the design phase and, as such, could not be used to analyze the procurement process. We then selected a random, unbiased sample of 30 projects from the state project tracking system. However, as agreed with the requester, we terminated our review after completing 13 projects and 15 reclamation contracts—2 projects were divided into 2 phases, each involving a separate reclamation contract—because the weaknesses we identified were largely attributable to the

lack of written policies and procedures. It was therefore considered fruitless to continue reviewing additional projects. The 15 contracts ranged in dollar value from $25,696 to $3.2 million.

To determine whether WV/DOE was complying with state inspection and monitoring requirements, we interviewed WV/DOE headquarters officials and district office inspectors and reviewed WV/DOE's inspection manual. For the 13 projects in our sample, we reviewed the project files and extracted inspection data.

We reviewed OSMRE's annual oversight reports for West Virginia, covering fiscal years 1985, 1986, and 1987. We also interviewed responsible OSMRE field office officials in Charleston, West Virginia.

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